



City of Carmel

Carmel Board of Zoning Appeals Regular Meeting Monday, September 25, 2006

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 6:00 PM on Monday, September 25, 2006, in the Council Chambers of City Hall, Carmel, Indiana. The meeting opened with the Pledge of Allegiance.

Members in attendance were Leo Dierckman, James Hawkins and Earlene Plavchak, thereby establishing a quorum. Angie Conn and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mrs. Plavchak moved to approve the minutes of the August 28, 2006 meeting as submitted. The motion was seconded by Mr. Dierckman and **APPROVED 3-0.**

Mrs. Conn gave the Department Report. Item 10h, 122nd & Penn Development made their Public Notice eighteen (18) days prior to the meeting rather than twenty-five (25). The Board would need to vote to suspend the rules in order to hear the item.

Mr. Dierckman moved to suspend the rules. The motion was seconded by Mrs. Plavchak and **APPROVED 3-0.**

Mr. Molitor gave the Legal Report. Under the Rules of Procedure, when only three (3) Board members are present it would require that any Petition would need three (3) affirmative votes in order to pass. The Petitioner does have the right to request their item to be tabled until such time that four (4) or five (5) Board members are present. That must be requested at the beginning of the meeting. In addition, all of the Board members had received in their packets copies of the discovery requests that had been received from the opposing attorneys in the Martin Marietta litigation. He wanted to spend some time with each Board member individually in order to go over the material. Maybe they could discuss times after this meeting. The Board may want to have an Executive Session to go over everyone's answers.

Dave Coots asked that Item 4-5h, Lubavitch of Indiana Worship Center, be tabled for one month because there was considerable public input.

Mr. Hawkins stated that **Item 4-5h, Lubavitch of Indiana Worship Center** was **TABLED** at the Petitioner's request.

H. Public Hearing:

1-3h. TABLED UNTIL OCT. 23: Cingular Wireless Communications Tower

~~The applicant seeks the following special exception and development standards variance approvals:
Docket No. 06040014 SE Chapter 20H.02 Special Exception Uses~~

~~Docket No. 06040015 V Chapter 25.13.1.B.i Distance from Residential Property~~
~~Docket No. 06050009 V Chapter 25.13.01.3 Tower landscape requirements~~
~~The site is located at Brookshire Golf Course, northwest of 116th St. and Gray Rd.~~
~~The property is zoned P-1/Parks & Recreation.~~
~~Filed by Jim Buddenbaum of Parr Richey Obremskey & Morton for Cingular.~~

4-5h. Lubavitch of Indiana Worship Center

The applicant seeks approval for the following special use & development standards variance approvals:

Docket No. 06050007 SU Chapter 5.02 Special Uses

Docket No. 06050008 V Chapter 5.04.03.E.2 Minimum Lot Width

The site is located at 2640 W 96th Street and is zoned S-1/Residence.

Filed by Dave Coots of Coots, Henke & Wheeler, P.C.

TABLED until October 23, 2006 per the Petitioner's request.

6-9h. Pearson Ford Complex - Nottingham Plaza

The applicant seeks the following development standards variance approvals:

Docket No. 06070020 V Chapter 25.07.02-11.d.i Center ID sign height

Docket No. 06070021 V Chapter 25.07.02-11.g Center ID sign - changeable copy

Docket No. 06070022 V Chapter 25.07.02-8(b) 2 signs oriented south - Performance Collision

Docket No. 06070023 V Chapter 25.07.02-8(b) 2 signs oriented south - Quick Lane

The site is located at 10650 N. Michigan Rd. and is zoned B-3/Business within the US Hwy 421 Corridor Overlay. Filed by Dave Coots of Coots, Henke & Wheeler, P.C.

Present for the Petitioner: Dave Coots, Coots, Henke & Wheeler, 255 Carmel Drive, Carmel. The Public Hearing for this item was heard at last month's meeting. The Hearing was held open because the notice had not been properly posted on the property. They have since done that and submitted the affidavit to the Department.

Mr. Hawkins re-opened the Hearing.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The project has been approved by the Plan Commission. The Department is in favor of all Docket numbers. The Department Report describes the variance for the center ID sign. It is a variance of two (2) feet. The other variances are for the number of signs oriented toward the street right-of-way.

Mr. Hawkins asked the normal height for the center ID sign.

Mrs. Conn stated that for this particular sign within the highway corridor, it was eight (8) feet.

Ballot sheets could not be located.

Mr. Molitor stated the Board could suspend the rules to allow for a vote by a show of hands and delegate to the Chair the responsibility of signing the Findings of Fact.

Mr. Dierckman moved to suspend the rules to allow for the vote by a show of hands. The motion was seconded by Mr. Hawkins and **APPROVED 3-0.**

Mr. Dierckman moved to approve **Docket Nos. 06070020V, 06070021V, 06070022V and 06070023V, Pearson Ford Complex-Nottingham Plaza.** The motion was seconded by Mr. Hawkins and **APPROVED 3-0.**

10h. 122nd & Penn Development

The applicant seeks the following development standards variance approval:

Docket No. 06080021 V Chapter 14.04.01 Building Height

The site is located at the northeast corner of 122nd St. and Pennsylvania St., and is zoned R1/Residence and M3/Maufacturing, with a B3/Business rezone pending.

Filed by Paul Reis of Bose McKinney & Evans, LLP for Panattoni Development, LLC.

Present for the Petitioner: Paul Reis, Bose McKinney & Evans, 600 E. 96th Street, Suite 500, Carmel, IN. This variance is to increase the allowable height from thirty-five (35) feet to fifty (50) feet. A site map was shown. They are rezoning the property from two different districts, R-1 and M-3. The R-1 residential parcel was left over from quite a few years ago and was never rezoned. From looking at the Comprehensive Plan and the uses, they determined that B-3 would be the best transition district between the warehouse usage and the U.S. 31 Overlay. The maximum height in B-3 is only thirty-five (35) feet, whereas under the M-3 it is fifty (50) feet. This variance would allow the Petitioner in connection with the rezoning to B-3, which is before the City Council, to have all three buildings on the site to be increased to fifty (50) feet. He had information on the site and one of the buildings which had been approved by the Plan Commission.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared.

The Public Hearing was closed.

Mrs. Conn gave the Department Report. The Department is in favor of the variance request to increase the building height to fifty (50) feet. The site is adjacent to the U.S. 31 Corridor/Corporate Corridor and the proposed eight-story full-service hotel.

Mr. Dierckman moved to approve **Docket No. 06080021V, 122nd & Penn Development.** The motion was seconded by Mrs. Plavchak and **APPROVED 3-0.**

I. Old Business

There was no Old Business.

J. New Business

There was no New Business.

Mr. Molitor reminded the Board that he would like to meet with each Board member individually to discuss the discovery from the opposing attorneys. Maybe they could meet after this meeting or at any convenient time. The first document is the Plaintiff's First Interrogatories to Defendant City of Carmel and Clay Township Board of Zoning Appeals which is questions being put to the Board. Under the Federal Rules of Procedure, they have to answer these questions. The second is Plaintiff's First Request for Production of Documents to Defendant City of Carmel and Clay Township Board of Zoning Appeals. He thought they had already responded with all the documents that they have, but he needed to speak with each Board member individually to verify that none of the Board had any additional documents that would be responsive to this request.

Mr. Hawkins asked if they were responding as a Board or as individual members.

Mr. Molitor stated they would be responding as a Board, but he was concerned that each Board member would be deposed individually. He wanted them to be adequately prepared. He did not feel it was appropriate for the Board to delegate the responsibility just to the Chair.

K. Adjournment

Mr. Dierckman moved to adjourn. The motion was seconded by Mr. Hawkins and **APPROVED 3-0**. The meeting adjourned at 6:30 PM.

James R. Hawkins, Hearing Officer

Connie Tingley, Secretary